IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1704 OF 2007

Madhav W. Rajopadhye ....Petitioner
V/s.
Vinayak M. Shevade (deceased) .
Legal heir Smt.Shashikala V. Shevade .
and others ....Respondents

Mr.S.S. Patwardhan for the Petitioner.

CORAM : S.J. VAZIFDAR, J.
DATED : 27TH JULY, 2007.

P.C. :

1. Rule. Rule returnable and heard forthwith.

2. By an order dated 20.7.2007, I issued the notice returnable today. The order stated that the matter may be decided finally at the admission stage. The Respondents are absent despite service.

3. The impugned order rejects the Petitioner's application for condonation of delay and setting aside the order of abatement of the appeal. The appeal was filed by the Petitioner, who had filed the suit and the appeal.

4. Prior thereto, the Petitioner had filed the

appeal as a first appeal in this Court in 1991. The Respondent expired on 19.11.1999 during the pendency of the first appeal in this Court.

5. Soon thereafter the Bombay Civil Court Act was amended and the jurisdiction of the District Court was enhanced and as a result thereof, the proceedings were required to be transferred to the District Court at Pune. This was done only in November, 2000.

6. From the facts and circumstances of this case, it appears that the Appellant did not have notice of the same. Knowing that the jurisdiction had been transferred understandably no application for bringing the heirs on record was made in this Court. It is only in 2005 that the Petitioner came to know that the proceedings had in fact been transferred to District Court, Pune in November, 2000. The application for condonation of delay and setting aside the abatement was therefore made on 26.9.2005. The suit was filed in 1984. The Petitioner has been diligently prosecuting the suit ever since. There is no nondiligence at any stage. In these circumstances, there shall be miscarriage of justice if the application were not to be allowed.

7. Added to this is the fact that Respondent No.2 in the course of cross-examination, expressly stated that there was no difficulty for bringing the heirs on record and having the suit decided. This is an additional though by no means the only, factor on the basis whereof the learned Judge ought to have allowed the application.

8. In the circumstances, Rule is made absolute in terms of prayers (a) and (b). There shall be no order as to costs.